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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,967	02/25/2002	Roger Dahl	P-9367	7022
27581	7590	12/06/2005	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			MULLEN, KRISTEN DROESCH	
		ART UNIT	PAPER NUMBER	
		3766		

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

T2/TM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/082,967	DAHL, ROGER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kristen Mullen	3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 9/22/05 (Response).  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-11 and 14-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3-11 and 14-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 25 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4)  Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5)  Notice of Informal Patent Application (PTO-152)  
 6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: DEFIBRILLATION USING OBLIQUE VEIN ELECTRODE.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-4, 7-8, 11, 14 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helland (2002/0103506) in view of Smits (6,556,873).

Regarding claims 1, 11 and 14, Helland shows a method comprising placing a first electrode (25) into contact with a first portion of the heart proximate a superior vena cava; placing a second electrode (35) into contact with a second portion of the heart and transmitting an electrical pulse between the first electrode and the second electrode in response to a determination that a cardiac event is detected (Figs. 2, 11-13). Helland shows the second electrode (35) is located within “a coronary sinus region” which can include “any other cardiac vein accessible by the coronary sinus” [0031]. Although Helland fails to specifically show “any other cardiac vein accessible by the coronary sinus” is the oblique vein, attention is directed to Smits which teaches locating a lead within the oblique vein can result in successful defibrillation

of the left atrium (Col. 15, lines 1-3). Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the “any other cardiac vein accessible by the coronary sinus” of Helland to include the oblique vein as Smits teaches in order to successfully defibrillate the left atrium.

Regarding claims 3-4, Helland further shows a defibrillation waveform traveling between locations proximate the superior vena cava and the oblique vein in response to detection of atrial fibrillation (Figs. 11-13; [0046-0048; 0055-0056; 0071-0075]).

Regarding claims 7-8 and 17-18, Helland shows placing a third electrode (24) into contact with a wall of a right ventricle and transmitting an electrical pulse between the third electrode and at least one of the first and second electrodes if the heart is experiencing ventricular fibrillation (Figs. 4-5, 8; [0046-0048; 0055-0056])

4. Claims 5-6, 9-10, 15-16, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Helland (2002/0103506) in view of Smits (6,556,873), and further in view of Min et al. (5,690,686). Helland and Smits are as explained before. Although Helland and Smits fail to teach transmitting a uniphasic or biphasic electrical pulse between the first electrode and the second electrode and transmitting a uniphasic or biphasic electrical pulse between the third electrode and at least one of the first and second electrodes, attention is directed to Min et al. which teaches the transmission of biphasic or uniphasic electrical pulses between the first electrode and the second electrode, and between the third electrode and at least one of the first and second electrodes. It would have been an obvious design choice to one with ordinary skill in the art at the time of the invention to transmit biphasic or uniphasic electrical pulses between the first electrode and the second electrode, and between the third electrode and at least one of the

first and second electrodes, since applicant has not disclosed that these particular waveforms provide any criticality and /or unexpected results and it appears that the invention would perform equally well with any waveform.

The applied Smits reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention “by another”; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

***Response to Arguments***

5. Applicant's arguments filed 9/22/05 have been fully considered but they are not persuasive.

While applicant's amendments have obviated the 35 U.S.C. §§ 102(b) (e) and 35 U.S.C. § 103(a) rejections over the Kroll and Min references, applicant has failed to address the previously applied 35 U.S.C. § 103(a) rejections over Helland in view of Smits.

*Conclusion*

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kdm

Kristen Mullen

  
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KENNEDY/SCHAETZLE  
PRIMARY EXAMINER  
12/2/05